IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.1871 OF 2005

Shri.Jasin Anton Karwale
and Ors. ..Petitioners

Vs.

Smt.Prabhavati Prabhakar
Barve and others ...Respondents

...

Mr.S.M.Kamble for Petitioner
Mr.A.G.Damale for Respondent no.1

...

CORAM : B.H.MARLAPALLE,J.
DATE : MAY 2,2005

P.C.:

1. Heard Mr.P.S.Dani with Mr.Kamble, the learned counsel for the Petitioners and Mr.Damale, the learned counsel for the Respondents.

2. Rule. Respondents waive service. Rule is taken up for final hearing forthwith.

3. RCS No. 275 of 2004 has been filed by the present petitioners for permanent and perpetual injunction in respect of the suit property. In para no.1 of the plaint, the suit property described as an agricultural land admeasuring 2 H. 21.4 Ares from Survey No. 46-A/1 of village Dhovali in Vasai Taluka of District Thane. The suit was filed on or about 6.11.2004 and an application for amendment which came to be marked as Exh.20 was moved by the Plaintiffs on

or about 16.11.2004 praying for correction of survey number from survey no.46-A/1 to survey no.46. By the impugned order dated 5.3.2005 this application at Exh.20 has been rejected.

4. The trial Court referred to the contentions on the basis of 7x12 extracts and held that application was not maintainable. The trial Court also referred to the provisions of Order VI Rule 17 of the C.P.C. and while holding that application for amendment can be moved at any time, it noted that the claim of inadvertence cannot be accepted.

5. In W.P.No. 375 of 1991 the present parties were petitioners and respondents respectively and while disposing of the petition by an order dated 16.12.2003, the Division Bench of this Court noted the claim of the present petitioners that they were claiming tenancy over the agricultural land located in survey no.46 and admeasuring 2 H. 21.4 Ares. It is admitted that survey no.46 has been bifurcated in three different survey numbers sometimes in the year 2002 and they were survey no.46-A/1, 46-A/2 and 46-B. The claim of the present petitioners has been constantly in respect of the land in survey no. 46 but not the entire land and the claim is limited to the area admeasuring 2 H. 21.4 Ares, however, in the plaint originally filed they mentioned the suit

property as located in survey no.46-A/1. Though the agricultural land located in survey no.46-A/1 admeasures 2 H. 21.4 Ares, the claim of the plaintiffs cannot be limited to the land in that survey number alone and therefore, the correction was warranted. The present respondents were shown to be the owners of the entire land in survey no.46 when the Writ Petition was disposed of by this Court i.e. W.P.No. 375 of 1991. Thus, there are no other third parties who are not impleaded as defendants in the present lis i.e. RCS No. 275 of 2004. The approach of the trial Court is thus mechanical and without application of mind to the facts on record. The reasoning in the impugned order is therefore, unsustainable and the application for amendment, deserves to be allowed.

6. Hence, the petition succeeds. The impugned order is hereby quashed and set aside and the application at Exh.20 stands allowed in RCS No. 275 of 2004 but subject to the clarification that the claim of the petitioners is limited to an area admeasuring 2 H. 21.4 Ares.

7. Rule made absolute accordingly but without any order as to costs.

8. Certified copy expedited.

9. Writ to go to the trial Court forthwith.

[B.H.MARLAPALLE,J.]